

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 11321 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment?
- 2 To be referred to the Reporter or not?
- 3 Whether Their Lordships wish to see the fair copy of the judgment?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?
- 5 Whether it is to be circulated to the Civil Judge?

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UNION OF INDIA AND OTHERS - Petitioners
Versus
MULABHAI N CHAVDA - Respondent

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Appearance :

MS AVANI S MEHTA for the Petitioners.
MR GR MALHOTRA for the Respondent.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 16/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. The petitioners - Union of India and Others have filed this petition under Article 227 of the Constitution of India and challenged the impugned judgment and order dated 31-01-2006 passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short, "*Tribunal*"), whereby the learned Tribunal partly accepted O.A. No. 608 of 1998 filed by the original applicant - present respondent and quashed and set aside the impugned order of penalty of removal from service passed by the Disciplinary Authority on 07-07-1993 and confirmed by the Appellate Authority and the Revisional Authority, and instead of the order of removal, the learned Tribunal passed the order of reduction to the lower time scale of pay for a period of 5 years with future effect. The learned Tribunal also awarded 50% back-wages to the applicant while ordering reinstatement in service with the aforesaid order of penalty of reduction in rank on the applicant's furnishing certificate of not being gainfully engaged during that period.

2. The applicant was working as an Assistant

Goods Clerk on daily *ad hoc* basis when he was served a charge-sheet on 09-10-1986. The charge against the applicant was that he loaded excess wagons and, thereby, exhibited lack of integrity and devotion to do duty. Surprisingly, during the pendency of the Departmental Inquiry initiated against him, he was made permanent in 1987. After recording the evidence of the witnesses, the Inquiry Officer, in his report dated 18-12-1992, came to the conclusion that part of the charge of transshipment of the fourth wagon against the special consignment was proved. However, rest of the charges against the applicant of having connivance was not found to be proved, as there was no evidence to that effect. The Disciplinary Authority, agreeing with the Report of the Inquiry Officer, passed an order of removal from service on 27-07-1993, against which the applicant preferred an appeal, which was dismissed by the Appellate Authority. He had a further remedy of revision before the Revisional Authority. Instead, he preferred to file OA No. 580 of 1994 before the learned Tribunal, which was dismissed as withdrawn with permission to file fresh OA only after the

Revision Petition filed before the Revisional Authority was decided. Accordingly, the applicant had preferred Revision Application, which was dismissed by the Revisional Authority and, therefore, again he approached the learned Tribunal by way of another OA, which was rejected by the learned Tribunal on the ground of delay by its order dated 20-01-2004, against which the applicant filed writ petition i.e. Special Civil Application No. 4076 of 2004 before this Court, which was accepted on 28-04-2005 and the matter was remitted back to the learned Tribunal for deciding the said application after condoning the delay. Accordingly, the learned Tribunal by its impugned order dated 31-01-2006 (Annexure-A to the petition) partly allowed OA No. 608 of 1998 which is challenged in this petition.

3. Learned Counsel Ms. Avani Mehta for the petitioners vehemently submitted that though there was enough evidence against the applicant, the Inquiry Officer wrongly held that the charge of connivance against the applicant was not proved. She has tried to take us through the Report of the

Inquiry Officer which is otherwise not permissible in a writ petition under Article 227 of the Constitution of India. However, with a view to do complete justice to the petitioners, we have gone through the Report of the Inquiry Officer and the evidence of the witnesses recorded during the inquiry.

Having carefully gone through the same, we do not find any evidence to the effect that there was connivance on the part of the applicant except negligence on the part of the applicant in discharge of his duties. No other charge could be found to be proved. Hence, it cannot be said that the learned Tribunal committed grave error in interfering with the order of removal passed by the Disciplinary Authority which was confirmed in the appeal and in the revision by the Appellate Authority and the Revisional Authority. When the only charge of negligence was proved against the original applicant, then in our considered opinion, the learned Tribunal was right in coming to the conclusion that maximum penalty of removal from service could not be ordered.

It is no doubt true that the learned Tribunal ought not to have interfered with the order of penalty and it should have left the matter to the Disciplinary Authority for passing appropriate order of penalty as held by the Hon'ble Supreme Court in umpteen number of cases, as submitted by Ms. Mehta for the petitioners. However, in the instant case, we find that while setting aside the order of removal passed by the Disciplinary Authority and confirmed in the appeal and the revision by the Appellate Authority and the Revisional Authority, the learned Tribunal has substituted the order of penalty of removal by awarding penalty of reduction to the lower time scale of pay during the period of 5 years with future effect in view of the fact that the charge-sheet issued against the applicant was filed in 1986. Therefore, we would not like to interfere with the said order in our limited jurisdiction under Article 227 of the Constitution of India.

4. However, there is lot of substance in the submission made by Ms. Mehta for the petitioners that when the learned Tribunal itself has come to the

conclusion that the charge of negligence is proved against the applicant and that the Tribunal awarded punishment of reduction to the lower time-scale of pay for a period of 5 years with future effect, then there was no question of awarding 50% back-wages for all these purposes. Against that, learned Counsel Shri G. R. Malhotra for the respondent - original applicant submitted that there are several judgments of the Hon'ble Supreme Court in which the Hon'ble Supreme Court held that, ordinarily, the High Court should not interfere with the order passed by the learned Tribunal awarding full back-wages or 50% back-wages, but, in view of the recent pronouncements of the Hon'ble Supreme Court that if the person has not worked, he is not entitled for any wages, Shri Malhotra conceded that the order of 50% back-wages passed by the learned Tribunal be suitably modified. Even otherwise, we are of the considered opinion that once the learned Tribunal has come to the conclusion that the charge of negligence is partly found to be proved against the applicant and for that, penalty of reduction to the lower time scale of pay for a period of 5 years with future effect is inflicted by the

learned Tribunal, then in our considered opinion, there was no question of awarding 50% back-wages to the applicant.

5. Ms. Mehta for the petitioners rightly pointed out that in 1994, the applicant straightaway approached the learned Tribunal though he had a remedy of revision. However, he withdrew that application from the learned Tribunal with a view to file a Revision Application. On the rejection of his Revision Application, he approached the learned Tribunal but late. Because of that, his second O.A. was rejected by the learned Tribunal by order dated 20-01-2004. The said order was interfered with by this Court in writ petition i.e. Special Civil Application No. 4076 of 2004 filed by the applicant - original petitioner on 28-04-2005 and the matter was remanded to the learned Tribunal for deciding the same on merits. Accordingly, it was decided on merits and partly accepted by the learned Tribunal. Thus, the applicant was responsible for such gross delay in getting the matter finally decided and, therefore, awarding 50% back-wages would amount to

awarding premium to him.

6. Under the circumstances, we are of the considered opinion that the learned Tribunal materially erred in awarding 50% back-wages while substituting the order of penalty. Therefore, only that part of the order passed by the learned Tribunal awarding 50% back-wages to the original applicant - present respondent is hereby quashed and set aside. Rest of the order passed by the learned Tribunal is retained. Interim relief granted against reinstatement is hereby vacated forthwith. Now, the petitioners shall reinstate the respondent - original petitioner as per the judgment and order at Annexure-A passed by the learned Tribunal as early as possible but not later than 31st May, 2007. Rule made absolute to the aforesaid extent with no order as to costs.

[B. J. SHETHNA, J.]

[H. B. ANTANI, J.]

/shamnath

